

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JERRY LEE DOUGLAS,

Petitioner,
vs.
SUPERINTENDENT ZEE HYDEN,

Respondent.

3: 03-00221-CV- (JWS)-(JDR)

FINAL RECOMMENDATION
REGARDING RESPONDENT'S
MOTION TO DISMISS

(Docket No.71)

The Magistrate Judge has reviewed Mr. Douglas' objections to his initial recommendation and the respondent's responses thereto. (Docket Nos. 91 and 93). Nothing in the briefing would cause the Magistrate Judge to modify his recommendation that the respondent's motion to dismiss should be granted. Indeed, the objections – and consequently the responses – are a rehash of the initial briefing in this matter. Most importantly, the court again commends Mr. Douglas to the cases of *Galvan v. Alaska Department of Corrections*, 397 F.3d 1198, 1204 (9th cir. 2005) and *Casey v. Moore*, 386 F.3d 896, 911-913 (9th Cir. 2004) for the rule that the petitioner must fairly exhaust his claims before each appropriate state court by explicitly asserting a federal constitutional claim. Quite simply, that did not occur in this case.

CONCLUSION

For the foregoing reasons the Magistrate Judge hereby declines to modify his recommendation that the respondent's motion to dismiss at docket No. 71 should be **GRANTED.**

DATED this 1st day of May, 2006, at Anchorage, Alaska.

/s/ John D. Roberts
JOHN D. ROBERTS
United States Magistrate Judge